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ACP, Inc.

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

Filed

APR 08 2013

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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11 ACP, INC., a Delaware corporation,

12 Plaintiff,

13 v.

14 SKYPATROL, LLC, a Florida Limited Liability
15 Company, and GORDON HOWARD
16 ASSOCIATES, INC., doing business as
PassTime USA, a Colorado corporation,

17 Defendants.

C V 13-01572

Case No.

HRL

COMPLAINT FOR DAMAGES FOR
BREACH OF CONTRACT

JURY TRIAL DEMANDED

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COMPLAINT FOR DAMAGES FOR
BREACH OF CONTRACT

1 Plaintiff ACP, Inc. ("ACP") complains of defendants SkyPatrol, LLC ("SkyPatrol") and
2 Gordon Howard Associates, Inc., doing business as PassTime USA ("PassTime"), as follows:

3 1. ACP is a corporation organized and existing under the laws of the State of
4 Delaware with its principal place of business in Palo Alto, California.

5 2. SkyPatrol is a limited liability company organized and existing under the laws of
6 the State of Florida, with its principal place of business in Miami, Florida. Each member of
7 SkyPatrol is a citizen of the State of Florida.

8 3. PassTime is a corporation organized and existing under the laws of the State of
9 Colorado, with its principal place of business in Littleton, Colorado.

10 **JURISDICTION**

11 4. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §
12 1332 in that plaintiff ACP and defendants SkyPatrol and PassTime are citizens of different states
13 and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and
14 costs.

15 **VENUE**

16 5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1) and (2).

17 **INTRADISTRICT ASSIGNMENT**

18 6. Intradistrict assignment is proper in the San Jose Division pursuant to Civil Local
19 Rule 3-2(c).

20 **CLAIM FOR RELIEF**
21 **(Breach of Written Contract)**

22 7. ACP realleges and incorporates by reference the allegations of paragraphs 1-6,
23 inclusive, as if fully set forth herein.

24 8. On or about January 7, 2012, ACP, SkyPatrol, and PassTime entered into a written
25 contract by which ACP proposed a business transaction to SkyPatrol and PassTime. In exchange
26 therefor, and as an inducement to ACP's investigation of the potential transaction, SkyPatrol and
27 PassTime jointly and severally agreed to reimburse ACP for its actual out-of-pocket expenses
28 incurred in pursuit of the potential transaction.

1 9. ACP has provided all performance due from it under the contract, and satisfied all
2 conditions to the obligations of SkyPatrol and PassTime to provide the performance required of
3 them under the contract.

4 10. In pursuit of the transaction, ACP has incurred actual out-of-pocket expenses in an
5 amount in excess of the sum of \$75,000, exclusive of interest and costs. ACP has demanded that
6 SkyPatrol and PassTime reimburse ACP for its expenses, but SkyPatrol and PassTime have
7 breached the contract by failing to do so.

8 11. The breaches by SkyPatrol and PassTime have caused damages to ACP in an
9 amount in excess of the sum of \$75,000, exclusive of interest and costs, in an amount to be
10 determined at trial.

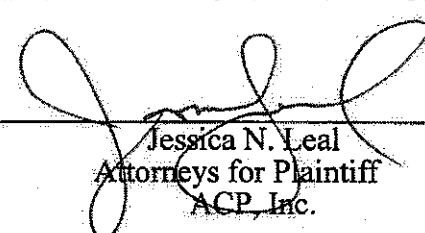
11 **PRAYER FOR RELIEF**

12 WHEREFORE, ACP prays for judgment as follows:

- 13 1. For damages in an amount in excess of \$75,000, exclusive of interest and costs, in
14 an amount to be determined at trial;
- 15 2. For costs of suit and reasonable attorneys' fees incurred herein;
- 16 3. For prejudgment interest and post-judgment interest as provided by law;
- 17 4. For such other relief as the Court deems proper.

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19 Dated: April 8, 2013

FREITAS TSENG & KAUFMAN LLP

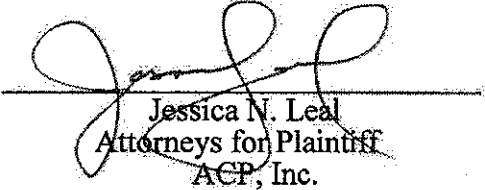
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22 Jessica N. Leal
23 Attorneys for Plaintiff
24 ACP, Inc.
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DEMAND FOR JURY TRIAL

ACP demands a trial by jury of all issues so triable.

Dated: April 8, 2013

FREITAS TSENG & KAUFMAN LLP



Jessica N. Leal
Attorneys for Plaintiff
ACP, Inc.